Denver Law Review

Volume 29 | Issue 2 Article 6

June 2021

Real Estate Standards

Dicta Editorial Board

REAL ESTATE STANDARDS

Six new standards were promulgated on Junary 15, 1952, by the Real Estate Standards Committee of the Denver Bar Association. These Standards, set out below, are immediately effective in the Second Judicial District only. They will be presented to the members of the Colorado Bar Association in convention on October 11th and ratification on a state-wide basis is anticipated.

Standard No. 70 WILLS—CONTINGENT BENEFICIARY

Problem: A Will names "A" beneficiary, but provides that if "A" is not alive at time of testator's death, then "B" is the beneficiary. The proceedings in probate show that "B" is not named as beneficiary in the petition for probate of the Will or in the citation to attend probate. The proceedings show on their face that "A" is still living. Should title be passed?

Answer: Yes.

Standard No. 71 QUIET TITLE—CONVEYANCE BEFORE A DECREE

Problem: "A' commences Quiet Title proceedings, but thereafter and before final decree is entered "A" conveys the property to "B" by warranty, quit claim or other deed. "B" is not substituted as a party to the Quiet Title proceedings. Final decree is entered finding that "plaintiff is the owner and in possession" of the real property.
Is B's title merchantable?

Answer: Yes.

Standard No. 72 CORPORATION—NATIONAL BANKS

Problem: Is it necessary for any documents evidencing the incorporation of a National Bank to be on file in a Recorder's office to support the acquisition or conveyance of real estate of such bank?

Answer: No.

Standard No. 73 JOINT TENANTS—CONVEYANCE

Problem: One of two joint tenants conveys to the other joint tenant an undivided one-half of the real estate concerned. Does the grantee by said deed become possessed of the entire property?

Answer: Yes.

Standard No. 74 CONVEYANCE—EXECUTION BY MARK

Problem: Should a conveyance in a chain of title be approved where the Grantor signs the Deed by his or her mark, and the Deed carries an acknowledgement good on its face, but there are no witnesses to the mark included on the Deed.

Answer: Yes.

Standard No. 75 SPECIAL IMPROVEMENT TAX—WHEN A LIEN

Problem: Does a local or special improvement authorized pursuant to statute, ordinance or charter become a lien or encumbrance before the amount of the special tax therefor has been ascertained, assessed, and made a lien in accordance with statute, ordinance or charter?

Answer: No.

Note: The Charter of the City and County of Denver provides that special taxes shall become liens from the publication of the assessing ordinance. Charters of other home rule cities should be examined for pertinent provisions. Insofar as the state law is concerned, it is provided that a special improvement tax becomes a lien when the amount of the assessment is finally determined by the Board of County Commissioners, City Council, or other governing body as the case may be. (Sections 1 and 8 of Chapter 138, C.S.A. 1935.)

In drafting contracts of sale, attorneys should recognize the possibility of assessment at some time subsequent to the transaction, especially if the improvements have been authorized.

COUNTY COURT PRACTICE CHANGED

After January 1, 1952, appellants from Denver municipal court judgments who wish to demand trial to a jury as a matter of right must make such demand within 10 days after they docket their appeal in the county court, according to a court rule promulgated by County Judge David Brofman on December 27. The rule further provides that the clerk shall mail notice of the appeal to the appellee, who must make demand within 20 days thereafter if he desires a jury trial.

Issuance of the court rule has been found necessary to avoid the misunderstandings arising from the fact that Rule 38 of the Rules of Civil Procedure, governing demand for jury trial, provides that the time limitation on such demand shall be "not later than 10 days after service of the last pleading", whereas Section 149 of Chapter 46, '35 C. S. A. directs that no written pleadings may be filed in cases appealed from justice court judgments.

The mailing of the notice of appeal to the appellee should also prove helpful since heretofore the winning party below had no inkling of an appeal unless he had meanwhile sought to execute on his municipal court judgment.

Until the rule becomes familiar to attorneys, copies of it will be handed to appellants at the time they perfect their appeal by payment of their county court docket fee, and appellees will receive a copy by mail along with notice of the appeal. Judge